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**Note:** The following Appendix will not appear in the Code of Federal Regulations.

## Appendix A

### List of Commenters<sup>38</sup>

California Department of Water Resources  
State Water Project (Water Project)  
California Public Utilities Commission  
(California Commission) (with notice of intervention)  
Comverge, Inc. (Comverge)  
Duke Energy Corporation (Duke)  
Edison Electric Institute (EEI)  
FirstEnergy Service Company (FirstEnergy)  
Electric Power Supply Association (EPSA)  
Electricity Consumers Resource Council (ELCON)  
Energy Curtailment Specialists, Inc.  
(Curtailment Specialists) (also filed motion to intervene)  
EnerNOC, Inc. (EnerNOC) (also filed motion to intervene)  
Indiana Utility Regulatory Commission (Indiana Commission) (with notice of intervention)  
Industrial Coalitions<sup>39</sup>

### List of Commenters

ISO/RTO Council<sup>40</sup>  
National Association of Regulatory Utility Commissioners (NARUC)  
National Rural Electric Cooperative Association (NRECA)  
Public Interest Organizations (Public Interest Orgs)<sup>41</sup>  
San Diego Gas & Electric Company (SDG&E)  
Tennessee Valley Authority (TVA) (with motion to intervene)  
Westar Energy, Inc. (Westar) (with motion to intervene)

[FR Doc. 2010-9084 Filed 4-21-10; 8:45 am]

**BILLING CODE 6717-01-P**

<sup>38</sup> The abbreviations used to identify these commenters in this Final Rule are shown parenthetically.

<sup>39</sup> Filed on behalf of Coalition of Midwest Transmission Customers, NEPOOL Industrial Customer Coalition, and PJM Industrial Customer Coalition.

<sup>40</sup> ISO/RTO Council includes the Independent System Operators operating as the Alberta Electric System Operator, the California Independent System Operator, Electric Reliability Council of Texas, the Independent Electricity System Operator of Ontario, Inc., ISO New England, Inc., Midwest Independent Transmission System Operator, Inc., New York Independent System Operator, Inc., PJM Interconnection, L.L.C., Southwest Power Pool, Inc., and New Brunswick System Operator.

<sup>41</sup> Jointly filed on behalf of Project for Sustainable FERC Energy Policy, Natural Resources Defense Council, the Pace Energy and Climate Center and Conservation Law Foundation.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 358

[Docket No. RM07-1-002; Order No. 717-C]

#### Standards of Conduct for Transmission Providers

Issued April 16, 2010.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order on Rehearing and Clarification.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) issued Order No. 717-A to address requests for rehearing and make clearer the Standards of Conduct as implemented by Order No. 717. The Commission issued Order No. 717-B to address expedited requests for rehearing and clarification concerning paragraph 80 of Order No. 717-A and whether an employee who is not making business decisions about contract non-price terms and conditions is considered a “marketing function employee.” This order addresses additional requests for rehearing and clarification concerning Order No. 717-A.

**DATES:** *Effective Date:* This rule will become effective July 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Leonard Tao, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8214.

#### SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

### Order on Rehearing and Clarification

#### I. Introduction

1. On October 16, 2008, the Commission issued Order No. 717 amending the Standards of Conduct for Transmission Providers (the Standards of Conduct or the Standards) to make them clearer and to refocus the rules on the areas where there is the greatest potential for abuse.<sup>1</sup> On October 15, 2009, the Commission issued Order No. 717-A to address requests for rehearing and clarification of Order No. 717, largely affirming the reforms adopted in

Order No. 717.<sup>2</sup> On November 16, 2009, the Commission issued Order No. 717-B to address expedited requests for rehearing and clarification concerning paragraph 80 of Order No. 717-A and whether an employee who is not making business decisions about contract non-price terms and conditions is considered a “marketing function employee.”<sup>3</sup> In this order, the Commission grants additional clarification concerning matters petitioners raised regarding the Commission’s determinations in Order No. 717-A.

#### II. Requests for Clarification and/or Rehearing

2. Edison Electric Institute (EEI), Transmission Dependent Utility Systems (TDUS), Transmission Access Policy Study Group (TAPS), National Rural Electric Cooperative Association (NRECA), Associated Electric Cooperative (AEC), Basin Electric Power Cooperative (Basin Electric), Xcel Energy Services (Xcel), E.ON U.S., Avista Corporation (Avista), the American Public Gas Association (APGA) and Western Utilities<sup>4</sup> filed requests for clarification, or in the alternative, requests for rehearing. The Tri-State Generation and Transmission Association (Tri-State) filed in support of the NRECA’s request. The Electric Power Supply Association (EPSA) filed a motion for leave to answer and an answer to Western Utilities’ request for clarification and rehearing.<sup>5</sup>

<sup>2</sup> *Standards of Conduct for Transmission Providers*, Order No. 717-A, 74 FR 54463 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 31,297 (2009) (Order No. 717-A).

<sup>3</sup> *Standards of Conduct for Transmission Providers*, Order No. 717-B, 74 FR 60153 (Nov. 20, 2009), 129 FERC ¶ 61,123 (Nov. 16, 2009) (Order No. 717-B). On October 30, 2009, EEI filed a request for expedited clarification of a single issue addressed in Order No. 717-A. The Commission determined that it should address this issue expeditiously even though the time allowed under the regulations for filing rehearing requests had not yet expired. For this reason, the Commission issued Order No. 717-B on November 16, 2009, in which it addressed a single clarification request of EEI, Western Utilities, Otter Tail and Central Vermont. All other timely requests for rehearing, i.e. those filed by November 16, 2009, are addressed in this order.

<sup>4</sup> Western Utilities is comprised of Arizona Public Service Company, Avista Corporation, El Paso Electric Company, Idaho Power Company, Pacific Gas and Electric Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Southern California Edison Company, and Tucson Electric Power Company.

<sup>5</sup> EPSA objects to Western Utilities’ characterization of its filing as a request for clarification.

<sup>1</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, 73 FR 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008) (Order No. 717).

### III. Discussion

#### A. Procedural Matters

3. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>6</sup> prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We will accept the EPSC's answer to Western Utilities' motion for clarification and/or request for rehearing because it provided information that assisted us in our decision-making process.

#### B. Independent Functioning Rule

##### i. Transmission Function Employees

4. In paragraph 27 of Order No. 717-A, the Commission clarified that personnel engaged in granting or denying transmission service requests are transmission function employees because the act of granting or denying transmission service requests is an integral part of "planning, directing, organizing or carrying out of day-to-day transmission operations."<sup>7</sup> The Commission then elaborated in this paragraph that the term "transmission function employee" includes "an employee responsible for performing system impact studies or determining whether the transmission system can support the requested services as this type of employee is planning, directing, organizing or carrying out the day-to-day transmission operations."<sup>8</sup>

##### *Requests for Rehearing and Clarification:*

5. EEL, Western Utilities, Xcel, Avista and Basin Electric argue that paragraph 27 of Order No. 717-A overruled paragraph 147 of Order No. 717 in which the Commission stated that so long as the preparation of system impact studies "do[es] not implicate the day-to-day operation of the transmission system, they are not transmission functions."<sup>9</sup> The parties request that the Commission reconsider its statement in Order No. 717-A.

6. Western Utilities argues that in many instances, system impact studies have nothing to do with day-to-day operations of the transmission system. Western Utilities states that some studies are used to assess whether any additional costs may be incurred in order to provide the requested transmission service. Western Utilities further states that where such studies are required, they trigger the process for determining the modifications needed to provide the service at some future date and, thus, are not day-to-day

transmission operations. Western Utilities requests that the Commission clarify that studies related to determining the upgrades necessary to the transmission system to provide service, including system impact studies, do not qualify as Transmission Function activities, because they fall under the category of "long-range planning."

7. EPSC responds to Western Utilities' argument by stating that transmission system impact studies do have an impact on day-to-day transmission operations as these studies provide significant insight into non-public development plans of market participants and opportunities for additional investments and that these studies are a core function of transmission providers.

8. Avista states that studies related to interconnection requests, which identify interconnection facilities needed to interconnect a new generator as an energy resource or network resource, do not convey any rights to deliver electricity to any specific customer or point of delivery and do not implicate the day-to-day operation of the transmission system.

9. In the event that the Commission does not grant the requested clarification, Basin Electric asks the Commission to extend the date for compliance with paragraph 27 to 90 days after the date of this order.

##### *Commission Determination:*

10. We deny the requests to reconsider paragraph 27 in Order No. 717-A. The Commission finds that paragraph 27 of Order No. 717-A is not inconsistent with the Commission's findings in paragraph 147 of Order No. 717. In essence, certain protestors argue that the Commission's finding in Order No. 717-A that a "transmission function employee" includes an employee responsible for performing system impact studies is inconsistent with the Commission's finding in Order No. 717 that so long as the preparation of system impact studies "do[es] not implicate the day-to-day operation of the transmission system, they are not transmission functions."<sup>10</sup> In order to reconcile these seemingly inconsistent statements, these Commission findings must be viewed in the context of the protestors' requests for clarification. Specifically, in Order No. 717 and Order No. 717-A, the Commission determined whether system impact studies performed pursuant to narrowly described fact scenarios would lead to a grant or denial of transmission service.

11. In paragraph 147 of Order No. 717, we granted a request for clarification from Idaho Power Company that asked whether long-range planning functions such as integrated resource planning and preparation of system impact studies are transmission functions. The Commission stated that "so long as these activities do not implicate the day-to-day operation of the transmission system, they are not transmission functions."<sup>11</sup> Thus, Order No. 717 responded to a narrow request for clarification concerning integrated resource planning and the conduct of system impact studies for long-range planning.<sup>12</sup> The Commission did not state in Order No. 717 that the conduct of system impact studies is at all times a long-range planning function, but only recognized that, in some cases, the preparation of system impact studies might not implicate the day-to-day operation of the transmission system. The protestors are simply incorrect in their assertion that the Commission found in Order No. 717 that preparation of a system impact study can never be considered a transmission function.

12. Similarly, in paragraph 27 of Order No. 717-A, the Commission granted another narrow request for clarification, which asked whether transmission function employees include just the employees who post on the OASIS that a particular request has been granted or denied or also those employees who are responsible for performing the underlying system impact studies or otherwise determining whether the transmission system can support the requested services.<sup>13</sup> In response, the Commission first clarified that personnel engaged in granting or denying transmission service requests are transmission function employees because the act of granting or denying transmission service requests is an integral part of "planning, directing, organizing or carrying out of day-to-day transmission operations"<sup>14</sup> and then elaborated, in response to the second part of the clarification request that the term "transmission function employee" includes an employee responsible for performing system impact studies or determining whether the transmission system can support the requested services because the act of granting or denying transmission service requests is an integral part of "carrying out of day-to-day transmission operations."<sup>15</sup>

<sup>11</sup> Order No. 717 at P 147.

<sup>12</sup> *Id.*

<sup>13</sup> Order No. 717-A at P 26.

<sup>14</sup> *Id.* P 27.

<sup>15</sup> *Id.*

<sup>6</sup> 18 CFR 385.213(a)(2) (2009).

<sup>7</sup> Order No. 717-A at P 27.

<sup>8</sup> *Id.*

<sup>9</sup> Order No. 717 at P 147.

<sup>10</sup> *Id.* See also Order No. 717-A at P 27.

13. While the language in paragraph 27 of Order No. 717–A could have been more artfully worded, the Commission in this paragraph intended to clarify that, in the context of an employee conducting a system impact study to determine whether a transmission system can support a transmission service request, such an employee's act of performing a system impact study would necessarily classify that employee as a "transmission function employee." The Commission intended the clarification in this paragraph to apply only to the situation in which an employee conducts a system impact study to determine whether a transmission system can support a transmission service request, and not to every situation in which an employee conducts a system impact study.

14. In making the clarification in paragraph 27 of Order No. 717–A, the Commission focused on the § 358.3(h) definition of "transmission function" as the " \* \* \* carrying out of day-to-day transmission operations, including the granting and denying of transmission service requests."<sup>16</sup>

15. EEI argues that "it is the tests that determine whether transmission is available, not the testers."<sup>17</sup> As such, EEI contends that performing a system impact study is not day-to-day control over the operation of the transmission system.<sup>18</sup> While a "tester" may not make the determination to grant or deny transmission service, EEI's argument ignores the fact that it is the knowledge that an employee obtains while conducting a system impact study in response to a transmission service request that could be used to favor an affiliate over its competition. For this reason, we find that a "tester" who grants and denies transmission service requests by disclosing the results of a test is engaging in "transmission functions" as defined in § 358.3(h).<sup>19</sup>

16. However, we clarify that a system impact study performed pursuant to a request for energy resource interconnection service or network resource interconnection service is similar to long-range planning and therefore not a transmission function, because the focus of such a study is to determine the impact of the proposed interconnection on the safety and reliability of the transmission provider's transmission system, but without conveying a right to transmission

service.<sup>20</sup> Accordingly, we find that the performance of a system impact study in the context of evaluating an energy resource interconnection service and network resource interconnection service is not a transmission function.

17. Similarly, we find that the performance of a system impact study that is not a part of day-to-day transmission operations and performed solely to determine the transmission system upgrades necessary to provide service is a part of long-range planning. Accordingly, we clarify that a system impact study performed solely to assess what, if any, additional costs may be incurred in order to provide transmission service is not a transmission function *so long as* the performance of this system impact study is not carried out as part of day-to-day transmission operations, including the granting or denying of transmission service.

18. In light of the Commission's denial of the requests to reconsider paragraph 27 of Order No. 717–A, the Commission grants Basin Electric's request to extend the date of compliance with paragraph 27 of Order No. 717–A to ninety (90) days after the date of this order.

#### ii. Marketing Functions

19. In Order No. 717–A, we clarified in paragraph 40 that "if an employee of a generation and transmission cooperative simply serves retail load and does not engage in activities included in the 'marketing functions' definition in § 358.3, then this employee is not a 'marketing function employee'."

<sup>20</sup> See *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); see also *Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004). In Order No. 2003 at P 767, the Commission stated the following: "Both Energy Resource Interconnection Service and Network Resource Interconnection Service provide for the construction of Network Upgrades that would allow the Interconnection Customer to flow the output of its Generating Facility onto the Transmission Provider's Transmission System in a safe and reliable manner. However, \* \* \* neither Energy Resource Interconnection Service nor Network Resource Interconnection Service in and of itself conveys the right to do so. Moreover, neither type of Interconnection Service constitutes a reservation of transmission capacity. The Interconnection Customer, load or other market participant would have to request either point-to-point or Network Integration Transmission Service under the Transmission Provider's OATT in order to receive the delivery service that is a prerequisite to flowing power onto the system."

#### *Requests for Rehearing and Clarification:*

20. TAPS requests clarification that a generation and transmission cooperative's sales to its distribution cooperative members and a municipal joint action agency's sales to its municipal distribution utility members are analogous to a vertically integrated utility's retail sales function and, therefore, the employees of a generation and transmission cooperative, as well as the employees of a municipal joint action agency are not "marketing function" employees for the purposes of the Standards of Conduct. Similarly, TDUS, NRECA, Tri-State, AEC and Basin Electric request clarification that wholesale sales of electric energy and capacity by generation and transmission electric cooperatives to their distribution cooperative members do not fall within the scope of marketing functions. TAPS argues that paragraph 40 of Order No. 717–A creates ambiguity. TAPS states that generation and transmission cooperatives are not technically "serv[ing] retail load." TAPS further argues that because generation and transmission cooperatives are engaged in functions almost identical to serving retail load, there is an ambiguity between what it thinks the Commission intended to state and the language in Order No. 717–A.

#### *Commission Determination:*

21. We will grant the requested clarification regarding generation and transmission cooperatives. In Order No. 888–A, the Commission clarified that if a distribution cooperative sought open access transmission service from a Transmission Provider, only that specific distribution cooperative, not its member distribution cooperatives, would be required to offer transmission service. The Commission determined that generation and transmission cooperatives were not affiliates of their distribution cooperatives for purposes of application of the "reciprocal transmission requirement" of Order No. 888.<sup>21</sup> Subsequently, in Order No. 2004–A, we stated that generation and transmission cooperatives are not subject to the Standards of Conduct consistent with the policies established under Order No. 888.<sup>22</sup> We find that the adoption of the employee functional approach in the Standards of Conduct does not warrant a change in our treatment of G&T cooperatives. Therefore, we clarify that sales of power by generation and transmission

<sup>21</sup> Order No. 888–A, FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,048 at 30,366.

<sup>22</sup> Order No. 2004–A at P 27.

<sup>16</sup> 18 CFR 358.3(h).

<sup>17</sup> EEI Nov. 16, 2009 Request for Clarification at 4.

<sup>18</sup> *Id.*

<sup>19</sup> 18 CFR 358.3(h).

cooperatives to their member generation and transmission cooperatives or to their member distribution cooperatives do not constitute marketing functions under the Standards of Conduct. Similarly, a municipal joint action agency, which is a public agency that provides power to its municipal member-owners, does not perform a marketing function when selling power to those members.

### iii. Marketing Function Employees

22. In paragraph 80 of Order No. 717–A, the Commission stated the following:

The Commission clarifies that an employee in the legal, finance or regulatory division of a jurisdictional entity, whose intermittent day-to-day duties include the drafting and redrafting of non-price terms and conditions of, or exemptions to, umbrella agreements is a “marketing function employee.” “Marketing functions” are not limited to only price terms and conditions of a contract, because non-price terms and conditions of a contract could contain information that an affiliate could use to its advantage. For example, delivery or hub locations in a contract are non-price terms that could be used to favor an affiliate. In addition, negotiated terms and conditions could affect the substantive rights of the parties. For this reason, we decline to make a generic finding to limit “marketing functions” to only price terms and conditions, but will consider waiver requests concerning an employee whose intermittent duties involve drafting non-price terms and conditions.<sup>23</sup>

23. In Order No. 717–B, the Commission granted limited rehearing and clarification to address expedited clarification requests regarding paragraph 80 of Order No. 717–A. Specifically, the Commission stated the following:

The Commission clarifies that the language in paragraph 80 of Order No. 717–A was overly broad. The Commission further clarifies that we intended to state in paragraph 80 of Order No. 717–A that an employee making business decisions about non-price terms and conditions can be considered a “marketing function employee” because that employee is actively and personally engaged in marketing functions. However, an employee who simply drafts or redrafts a contract, including non-price terms and conditions, without making business decisions is not a “marketing function employee.”<sup>24</sup>

### *Requests for Rehearing and Clarification:*

24. Several additional parties have requested clarification regarding paragraph 80 of Order No. 717–A since the issuance of Order No. 717–B, but have raised the same issues as those addressed in Order No. 717–B. Xcel also

requests clarification that enterprise risk management employees may provide risk management services to both the wholesale sales function and the transmission function of a vertically integrated and/or combination utility, subject to the No Conduit Rule, and consistent with Order No. 717.

### *Commission Determination:*

25. Since the Commission has already addressed the arguments concerning paragraph 80 of Order No. 717–A in Order No. 717–B, we find that the requests for clarification regarding paragraph 80 of Order No. 717–A have been rendered moot. Similarly, we also find that the Commission’s determinations in Order No. 717–B render Xcel’s request for clarification moot. Xcel’s concern regarding the application of the Standards of Conduct to its risk management employees stems from its interpretation of paragraph 80 of Order No. 717–A. However, in Order No. 717–B, the Commission clarified that it did not intend to depart from the conclusions in paragraph 131 of Order No. 717. In paragraph 131, which the Commission reiterated in Order No. 717–B, we expressly stated that “a risk management employee may develop risk guidelines for both transmission function employees and marketing function employees.”<sup>25</sup> Accordingly, the Commission finds that these requests for rehearing concerning paragraph 80 of Order No. 717–A have been rendered moot.<sup>26</sup>

### iv. Long-Range Planning, Procurement and Other Interactions

26. In Order No. 717–A, the Commission stated that “meetings including both transmission function and marketing function employees are not barred under the Standards of Conduct as long as the meetings do not relate to transmission or marketing functions.”<sup>27</sup> The Commission also noted that the No Conduit Rule<sup>28</sup> still applies to these meetings.

### *Requests for Rehearing and Clarification:*

27. E.ON U.S. is concerned that paragraph 89 and paragraph 90 of Order No. 717–A could act as a blanket prohibition on any meeting or communication between marketing and transmission function employees in which non-public transmission function information is discussed. E.ON U.S. requests clarification that the

Commission did not eliminate certain exemptions in § 358.7 or the meetings in which information shared under these exemptions occurs. Specifically, E.ON U.S. notes the “specific transaction information” exemption in § 358.7(b);<sup>29</sup> the exemption allowing discussion of compliance information relating to Reliability Standards approved by the Commission in § 358.7(h)(2)(i);<sup>30</sup> and the exemption allowing discussion of information necessary to restore operation of the transmission system or that may affect dispatch of generating units in § 358.7(h)(2)(ii).<sup>31</sup>

### *Commission Determination:*

28. We grant E.ON U.S.’s request for clarification and confirm that the Commission did not intend to limit or eliminate the exemptions in § 358.7. We note that employees remain subject to the No Conduit Rule, and are prohibited from providing transmission function information to marketing function employees.

### v. Seller’s Own Production or Gathering or Processing Facilities

29. In Order No. 717–A, the Commission denied the request of APGA to eliminate the exclusion for sales of natural gas solely from a seller’s own production and from a seller’s own gathering or processing facilities from the definition of “marketing function.”<sup>32</sup> The Commission also noted that section 4 of the Natural Gas Act prohibits a pipeline from granting any undue preference or advantage to any person or subjecting any person to any undue prejudice or disadvantage.<sup>33</sup>

### *Request for Clarification or Rehearing:*

30. APGA requests that the Commission clarify that, notwithstanding any exemption from the Standards of Conduct, a natural gas transmission provider’s disclosure of non-public transmission function information to its gas sales employees or those affiliated producers, gatherers and processors constitutes the granting of an “undue preference or advantage” under section 4 of the Natural Gas Act. APGA argues that “the Commission is obligated under the Act ‘to prevent discrimination against shippers who must depend on monopolistic pipelines for transportation,’ and the disclosure of non-public transmission function information by pipelines to their sales employees and those of its affiliates clearly constitutes improper favoritism.” Accordingly, APGA asks that if the

<sup>23</sup> Order No. 717–A at P 80.

<sup>24</sup> Order No. 717–B at P 6.

<sup>25</sup> Order No. 717 at P 131.

<sup>26</sup> We note that risk management employees remain subject to the No Conduit Rule, and are prohibited from providing transmission function information to marketing function employees.

<sup>27</sup> Order No. 717–A at P 89.

<sup>28</sup> 18 CFR 358.6.

<sup>29</sup> 18 CFR 358.7(b).

<sup>30</sup> 18 CFR 358.7(h)(2)(i).

<sup>31</sup> 18 CFR 358.7(h)(2)(ii).

<sup>32</sup> Order No. 717–A at PP 55–58.

<sup>33</sup> *Id.* P 58.

Commission declines to grant the requested clarification, then it should grant rehearing on this issue and on rehearing amend Order No. 717–A to state that such disclosure is unlawful.

*Commission Determination:*

31. We deny APGA's request for clarification or rehearing of Order No. 717–A. The Commission previously denied APGA's request for rehearing in Order No. 717–A and affirmed the adoption of the exclusion in Order No. 717. Now, for the first time, APGA asks that the Commission adopt a per se rule that, notwithstanding any exclusion, a natural gas transmission provider's disclosure of non-public transmission function information to its gas sales employees or its affiliated producers, gatherers and processors constitutes the granting of an "undue preference or advantage" under section 4 of the Natural Gas Act. As an initial matter, we note that APGA raises this request for rehearing for the first time in this proceeding. We have held repeatedly that it is inappropriate for a protestor to raise new issues in a request for rehearing because this practice is disruptive to the administrative process and denies parties the opportunity to respond.<sup>34</sup>

32. We also find that APGA's request for clarification or rehearing is beyond the scope of this proceeding. Although APGA describes its filing as a request for clarification or rehearing of Order No. 717–A, in fact, APGA requests that the Commission clarify section 4 of the Natural Gas Act.<sup>35</sup> The appropriate forum to raise this request for an interpretation of section 4 of the Natural Gas Act would be in either a complaint proceeding or a petition for declaratory order. Accordingly, we deny APGA's request for clarification or rehearing in this proceeding concerning section 4 of the Natural Gas Act.

33. Although we deny APGA's request for rehearing and clarification, we note that the exclusion must be read in the context of the whole of the Standards of Conduct. For example, section 358.2(a) of the Commission's regulations specifies that "A transmission provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis and must not make or grant any undue preference or

advantage to any person or subject any person to any undue prejudice or disadvantage with respect to any transportation of natural gas. \* \* \*", while section 358.2(d) further provides that "A transmission provider must provide equal access to non-public transmission function information to all its transmission customers, affiliated and non-affiliated, except in the case of confidential customer information or Critical Energy Infrastructure Information."

#### IV. Document Availability

34. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

35. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

36. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

#### V. Effective Date

37. Changes to Order No. 717–A adopted in this order on rehearing and clarification are effective July 21, 2010.

By the Commission.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010–9264 Filed 4–21–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**21 CFR Parts 1, 801, 803, 807, 812, 814, 820, 822, 860, 900, 1002, and 1040**

[Docket No. FDA–2010–N–0010]

### Center for Devices and Radiological Health; New Address Information

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Food and Drug Administration (FDA) is amending procedural regulations that pertain to obtaining, submitting, executing, and filing certain documents to reflect new address information for the Center for Devices and Radiological Health (CDRH). All filings and other documents that are subject to these regulations must be directed to the new addresses. This action is being taken to provide accuracy and clarity to the agency's regulations.

**DATES:** This regulation is effective April 22, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Domini Bean, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, rm. 4422, Silver Spring, MD 20993–0002, 301–796–5733.

**SUPPLEMENTARY INFORMATION:** FDA is amending its regulations in 21 CFR parts 1, 801, 803, 807, 812, 814, 820, 822, 860, 900, 1002, and 1040 to reflect new address information for certain components of the agency's CDRH. The changes are the result of the relocation of these offices to FDA's White Oak campus.

Publication of this document constitutes final action under the Administrative Procedures Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only technical changes to update mailing addresses and other information, and is nonsubstantive.

#### List of Subjects

##### 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

<sup>34</sup> *Baltimore Gas and Electric Company*, 91 FERC ¶ 61,270, at 61,922 (2000); *Baltimore Gas and Electric Company*, 92 FERC ¶ 61,043, at 61,114 (2000); *New York Independent System Operator, Inc.*, 97 FERC ¶ 61,006, at 61,015 (2001); *Carolina Power & Light Company*, 106 FERC ¶ 61,141, at P 15 (2004); *CARE v. Calpine Energy Services, LP*, 107 FERC ¶ 61,238, at P 7 (2004); *PJM Interconnection, LLC*, 126 FERC ¶ 61,030, at P 15 (2009).

<sup>35</sup> 15 U.S.C. § 717c (2009).